

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180****[Docket No. RSPA-03-15574 (HM-189U)]****RIN 2137-AD83****Hazardous Materials: Matter Incorporated by Reference****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Hazardous Materials Regulations (HMR) to standardize the format used to cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated by reference into the HMR. In addition, this rule adds missing cross-references and removes unnecessary cross-references in the HMR. The amendments contained in this rule are minor editorial changes and impose no new requirements.

**DATES:** *Effective date:* January 1, 2004.

*Incorporation by Reference Date:* The incorporation by reference of the publications listed in this final rule has been approved by the Director of the Federal Register as of January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Eileen Edmonson, Office of Hazardous Materials Standards, (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Research and Special Programs Administration (RSPA, we, us) references certain consensus standards, specifications, and recommended practices developed by nationally and internationally recognized standard-setting organizations and the hazardous materials industry to establish certain requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). This practice, known as incorporation by reference, allows us to incorporate the provisions of widely accepted technical standards into the regulations and to reduce the volume of material published in the **Federal Register**. The legal effect of incorporation by reference is that the referenced provisions are treated as if they were published in the **Federal Register** and in the HMR. As with any

other requirements appearing in regulations, the incorporated provisions have the force and effect of law.

The Office of the Federal Register's (OFR's) regulations, at 1 CFR Part 51, govern how RSPA and other Federal agencies may incorporate various documents by reference. These regulations require agencies to obtain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a publication is limited to the specific edition approved by the OFR. In the HMR, § 171.7 contains a complete listing of the source and name of each publication approved by the OFR regulations.

The OFR requires an agency to use the words "incorporated by reference" in the language incorporating a publication. The HMR incorporate by reference more than 100 publications and contain hundreds of references to these publications. For conciseness, we are using the wording "IBR, see § 171.7 of this subchapter" in the language incorporating a publication. This wording appears the first time a publication is referenced in a particular section. Some sections in the HMR currently contain multiple references to the same publication. These repeated references when they appear in the same section are being removed in this final rule.

In an earlier final rule (RSPA Docket No. 02-13658 (HM-215E), 68 FR 1013, January 8, 2003), we revised § 171.7 to incorporate by reference the 2002 edition of International Maritime Dangerous Goods Code (IMDG Code), including Amendment 31. We also authorized the continued use of the 2000 edition of the IMDG Code, including Amendment 30, until January 1, 2004. We are removing the reference to the 2000 edition of the IMDG Code in this final rule.

The rule also contains minor editorial corrections (e.g., incomplete section references, and typographical and punctuation errors), and certain other minor adjustments to enhance the clarity of the HMR.

Because these amendments impose no new requirements, notice and public comment procedures are unnecessary. In addition, making these amendments effective without the customary 30-day delay following publication will allow the changes to appear in the next revision of 49 CFR.

**II. Rulemaking Analyses and Notices****A. Executive Order 12866 and DOT Regulatory Policies and Procedures**

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

**B. Executive Order 13132**

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 ("Federalism"). This final rule does not propose any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law.

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

**C. Executive Order 13175**

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

**D. Regulatory Flexibility Act**

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes that will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.